

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT REPORT FCU 10-09
ROBERT KRAUSE
JULY 19, 2010

A report to the Flathead County Board of Adjustment regarding a request by Robert Krause for a conditional use permit to allow for an extractive industry in the Bigfork Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on August 3, 2010 beginning at 6:00 PM in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The Bigfork Land Use Advisory Committee (BLUAC) will hold a meeting regarding this proposal on July 29, 2010 at 4:00 pm in the Bethany Lutheran Church at 8559 Montana Highway 35 in Bigfork. BLUAC's recommendation will be forwarded to the Flathead County Board of Adjustment. This space is reserved for a summary of BLUAC's recommendation.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on August 3, 2010. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

Robert Krause
320 Coverdell Road
Bigfork, MT 59911

ii. Landowner(s)

Robert Krause
320 Coverdell Road
Bigfork, MT 59911

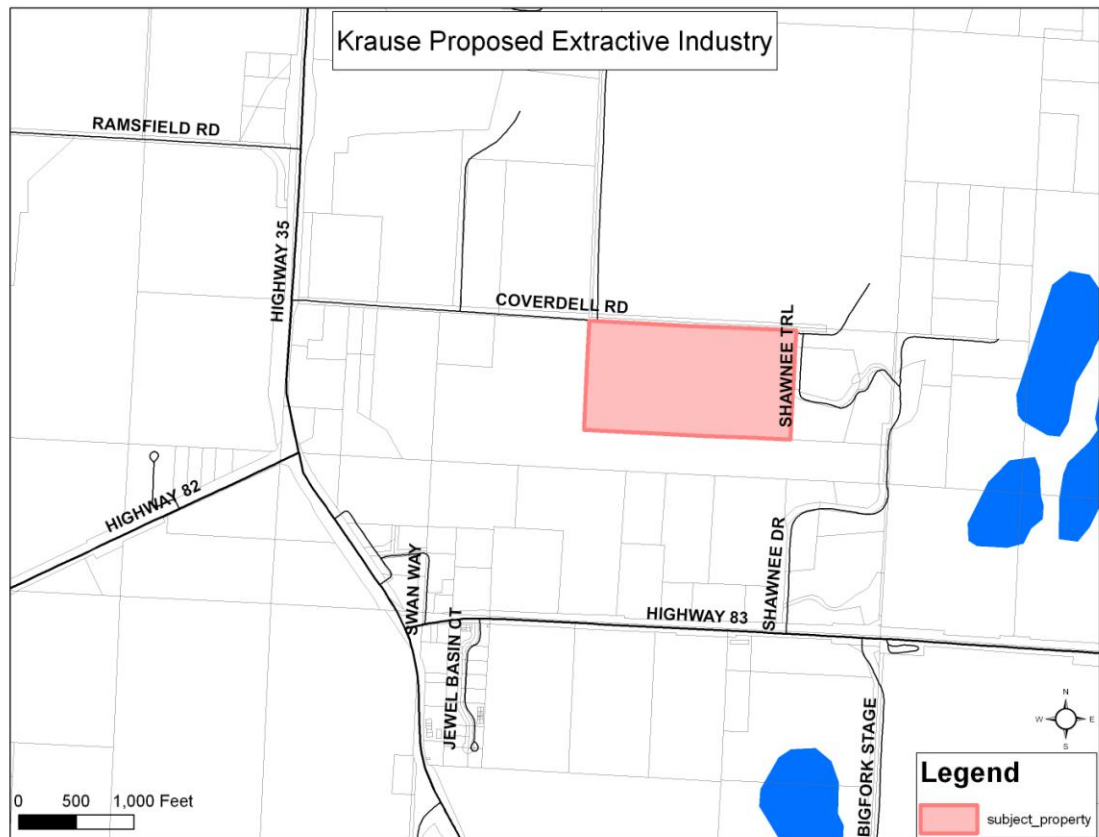
iii. Technical Assistance

None

B. Property Location and Size

The subject property is located at 320 Coverdell Road, north of Bigfork, Montana (figure 1). The property is approximately 35 acres and can legally be described as Tract 5 in Section 13, Township 27 North, Range 20 West PMM Flathead Montana.

Figure 1: Subject property (pink)



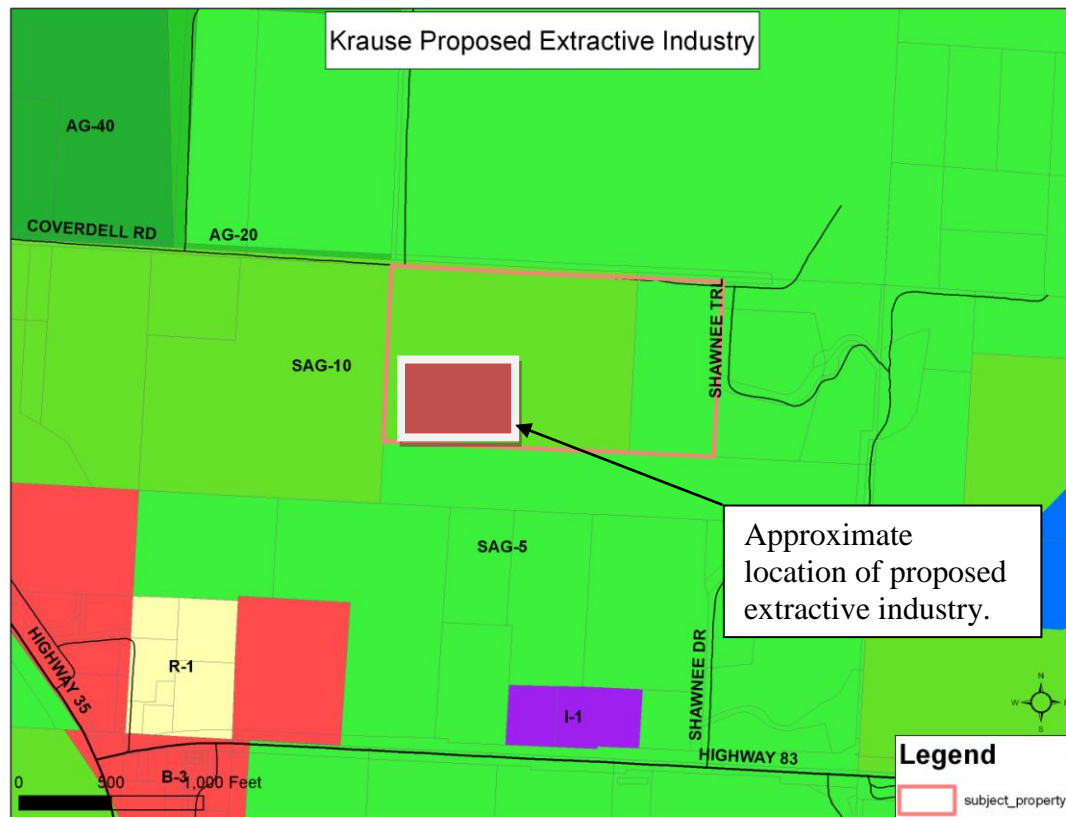
C. Existing Land Use(s) and Zoning

The majority of the subject property is zoned SAG-10 Suburban Agricultural, a district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses. A portion of the property is zoned SAG-5 Suburban Agricultural. The proposed activity will occur on the portion of the property zoned SAG-10 (see figure 2). The entire subject property is in agricultural activity and there is one single family residence.

D. Adjacent Land Use(s) and Zoning

Land use in the area is predominantly single family residential and agricultural. There is a gravel pit owned by KSG Holdings north of the subject property. The properties adjacent to the subject property are zoned SAG-5 or SAG-10.

Figure 2: The zoning in the immediate area.



E. Summary of Request

The applicant is proposing to remove the upper 4 to 5 inches of topsoil from 5 acres, which translates to about 8,000 cubic yards. The soil will be sold commercially. Traffic will enter and exit via Coverdell Road.

The removal of top soil for commercial use is considered an Extractive Industry as defined in Section 7.06.040 Flathead County Zoning Regulations (FCZR). The definition of Extractive Industry is: *Commercial or industrial operations involving the removal and processing of natural accumulation of sand, rock, soil, gravel, or any mineral.* Section 3.07.03 (14) (FCZR) lists Extractive Industries as a conditional use in SAG-10 zoning designation.

Section 4.10 FCZR defines additional conditional use standards for extractive industries. The additional requirements include compliance with the Montana Open Cut Mining Act administered by the Montana Department of Environmental Quality (DEQ), a requirement for off street parking, and a “Plan for Development of the Site”. The applicant has submitted a plan for development of the site which includes off street parking and basic elements required in Section 4.10.040 FCZR.

F. Compliance With Public Notice Requirements

A notice of the request and public hearing was mailed to property owners within one hundred and fifty (150) feet of the subject property on July 7, 2010. Legal notice was published in the Daily Interlake newspaper on July 18, 2010.

G. Agency Referrals

Request for comments were sent to the following public agencies.

- Dave Prunty, Flathead County Public Works regarding the use of the approach and of the condition of the roadway
- Rod Samdahl of DEQ regarding Montana's Open Cut Mining Laws

III. COMMENTS RECEIVED

A. Public Comments

As of 5:00 pm of July 19, 2010, no public comments have been received. Any public comments received after July 19, at 5:00 pm will be distributed directly to the appropriate boards at the time of the public meeting/hearing.

B. Agency Comments

- Dave Prunty, Flathead County Public Works
 - *We have no issues with Coverdell Road. It was overlayed ~5 years ago and is in pretty good shape. We don't know what approach will be used but we really have no jurisdiction over an approach until it is improved. That is when we can make them come up to our standards. If the approach is dirt/gravel dust could be an issue and we would hope there will be dust abatement on the property and approach. Tracking material onto Coverdell could also be an issue and if this would happen, the applicant would need to immediately clean up the road to minimize any dust issues.*
- Rod Samdahl, Montana DEQ
 - *This site has been under scrutiny since 2005. We received complaints in 2005 and 2009 about the Krauses mining and selling topsoil without a permit. They attempted to obtain a permit from us but failed to post bond and the application was dropped. My caution here is that topsoil mining tends to be underreported and the legal maximum is frequently exceeded. They are allowed to take 10,000 cubic yards over a lifetime, regardless of how many places they strip, before they must pull a permit. Most times they take a full foot or more and only report 6 inches. It only takes about six acres dug a foot deep to make the 10,000 cubic yard max. Topsoil in this area is pretty good. You can see in the attached photos from May 2005 that they were taking at*

least a foot¹. Estimates by one of our inspectors last summer were that they had taken about 3,000 cy by that time.

- *We have no problem with their topsoil operation at this location as long as they watch their volumes and apply for a permit before they exceed 10,000 cy.*

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

A. Site Suitability

i. Adequate usable space

The subject property is approximately 35 acres, of which approximately 5 acres will be affected by the proposed use. The majority of the remaining portion of the property could be available for other uses. The property has adequate usable space for the scope of the operation.

Finding #1- The subject property has adequate usable space for the proposed extractive industry because the property is approximately 35 acres and the proposed extractive industry will occupy 5 acres of the subject property.

ii. Adequate access

The subject property can be accessed by Coverdell Road. Coverdell Road is a paved county road with an approximate 22 foot travel surface. The area proposed for the excavation will be accessed from an approach located to the east of the home. Traffic will drive across a field to where the topsoil will be extracted. Site lines on Coverdell are not obstructed, and the road is flat and straight.

The approach to be used as access onto Coverdell Road is not an improved approach. According to agency comments, the county has no jurisdiction over the approach until it is improved. The applicant is not required to improve the approach, but the unimproved approach may result in the tracking of materials onto Coverdell Road. This may result in a maintenance issue for the county. The applicant needs to be responsible for the cleanup of materials tracked onto the road .

Finding #2- The proposed use has adequate access because the Coverdell Road is a paved county road 22 feet wide, is flat and straight with unobstructed site lines, and the applicant will be responsible for materials tracked onto Coverdell Road.

¹ See file FCU-10-09 Robert Krause for photos submitted by Rod Samdahl

iii. Absence of environmental constraints

According to available groundwater data in the Bigfork Neighborhood Plan, groundwater is estimated to be greater than 20 feet in this area. According to the National Wetlands Inventory there are no wetlands. The property is in agricultural production and does not appear to have critical habitat for sensitive species, nor is it located in an area known to be winter range for large ungulates. According to FEMA FIRM Panel 2305G there are no flood hazards on the property. The subject property appears to be free of environmental constraints. The applicant has contacted the DEQ for compliance with the state's open cut mining laws.

Finding #3- The proposed use should not have significant impacts on the natural environment because the property is largely absent of commonly identified environmental constraints.

B. Appropriateness of design

i. Parking scheme

The number and location of parked vehicles will likely depend upon where on the property the soil is being removed from. According to the applicant, up to 10 loads could be removed from the property per day. Under the heaviest traffic scenario if all 10 loads came for a load at the same time, there would need to be room for 10 trucks. Given the property is 35 acres, it seems reasonable all 10 trucks could be accommodated on the property without vehicles parked on the county road. The applicant lives on the property and will be the operator of the front end loader, no additional parking for employees is necessary.

ii. Traffic circulation

The exact traffic circulation will likely depend upon where on the property the soil is being removed. The subject property is clear and flat and any truck traffic could navigate the property accordingly. All vehicles entering and exiting the property will utilize Coverdell Road.

iii. Open space

Approximately 30 acres of the 35 acre tract will not be affected by this proposal. Once the applicant has finished the operation, the area where soil will be extracted from will revert to agricultural land. There will be no long-term impacts to open space.

Finding 4- The site has adequate space for parking, traffic circulation, and open space because the proposal will only affect 5 acres of the 35 acre subject property.

iv. Fencing/screening

The applicant is not proposing any fencing or screening. The property is located in a primarily agricultural area. There will be no pit created by the extraction of soil. Fencing and screening is required to be considered in a plan of operation in Section 4.10.040 FCZR (1)(B) to restrict access to dangerous

areas. Dangerous areas associated with extractive areas may include a pit, and associated blasting. The primary hazard associated with the proposed extraction will be the operation of heavy machinery which is limited in scope and could be comparable to the use of heavy machinery in residential or commercial construction or agricultural related activities. The use of machinery will not be out of scope with how machinery may be used in the surrounding area.

v. Landscaping

The applicant is not proposing any landscaping. The extraction is temporary and the property will revert to agricultural uses once the action is finished. Impacts to neighboring properties will be temporary and limited to the sight of piled soil and a limited amount of noise from heavy machinery. The intensity of the operation would not be significantly out of character with the area. The operation is not expected to create impacts to adjacent properties that would warrant landscaping.

Finding #5- Fencing, screening, and landscaping is not required because the operation is temporary and the intensity of use is not out of character with the surrounding agricultural uses.

vi. Signage

No signage is proposed by the applicant. Signs advertising a place of business are permitted in a SAG-10 designation. The sign cannot exceed 40 square feet.

Finding #6- Signage associated with the proposed application is acceptable because the area is zoned SAG-10 which allows signs advertising for a business on site if the sign area does not exceed 40 square feet.

vii. Lighting

The applicant is not proposing any lighting. Hours of operation are planned to be 7:00 am to 6:00 pm Monday on a seasonal basis as day light and weather permit.

Finding #7- The lack of lighting is appropriate because hours of operation will correspond to day light hours.

C. Availability of Public Services and Facilities

i. Sewer

The home on the property is serviced by an individual septic system. The applicant lives in the home and is planning on being the loader for the operation and will be able to use the facilities in the house. Trucks will only be on the subject property when being loaded and will not need facilities. No additional facilities are necessary.

ii. Water

The home on the property is serviced by an individual well. The applicant lives in the home and is planning on being the loader for the operation and will be able to use the house for water. Trucks will only be on the subject property

when being loaded and will not require water. No additional facilities are necessary.

Finding #8- The proposed use does not require connection to water or sewer facilities because the existing home can accommodate employee use and trucks are only on the subject property when being loaded.

iii. Storm Water Drainage

A storm water plan was not submitted by the applicant. The site is relatively flat and over 1,700 feet from any water bodies. Impacts to adjacent properties or water bodies from stormwater is not anticipated to be an issue, however the operation will disturb greater than one acre of soil and the applicant will need to acquire a Storm Water Pollution Prevention Plan (SWPPP) from the Montana Department of Environmental Quality.

Finding #9- The proposed use should not have issues with storm water drainage because the site is relatively flat, and over 1,700 feet from any water bodies.

iv. Fire Protection

The property is in the Bigfork Fire District. The nearest station is located about 3.35 miles away from the subject property on MT Highway 35, response times would be similar to other areas in the Bigfork Fire District. The need for fire protection as a result of the proposed action is likely to be very low because no fuels or other combustible materials will be stored on site and the scope of the proposed use is comparable to residential and commercial construction or agricultural activities.

v. Police Protection

The Flathead County Sheriff Department is responsible for law enforcement. The proposed use is not expected to result in an increased response times because the proposed use is similar to uses in other rural areas of Flathead County.

Finding #10- The impacts to fire and police protection would be acceptable because response times to the subject property will be similar to other uses in the area.

vi. Streets

The proposed use of the property may generate between 5 and 10 truck loads per day. This equates to 10 to 20 trips per day between when in operation. The operation does not require the construction of any roads. The 10 to 20 trips per day will be utilizing Coverdell Road. According to comments from the Flathead County Public Works Department, Coverdell is in good shape. The addition of 10 to 20 trips per day is not expected to have significant impact to the condition of the roadway. The use of an unimproved approach may result in materials being transported onto Coverdell Road. This can be mitigated by requiring the applicant to immediately remove materials transported onto Coverdell Road and improving the approach if required by Flathead County Road and Bridge Department.

Finding #11- The impacts to streets would be acceptable because Coverdell Road is paved county road in good condition and can accommodate an additional 10 to 20 trips per day.

D. Immediate Neighborhood Impact

i. Excessive traffic generation

The applicant estimates the operation will generate 5-10 truck loads per day. This relates to 10 to 20 trips per day. According to traffic counts taken by the Flathead County Road and Bridge Department in 2008, the Average Daily Traffic (ADT) count on Coverdell Road is 370. The ADT count is the daily average traffic over a week long period in April of 2008. The additional 10 to 20 trips per day are the same as the addition of 1 to 2 houses. The amount of traffic generated by the proposal is not out of character with the immediate neighborhood.

Finding #12- The impacts from traffic generation would be acceptable because the ADT on Coverdell Road is 370 and the proposed use would generate an additional 10 to 20 trips per day.

ii. Noise or vibration

Noise and vibrations will be generated by the use of heavy equipment. No blasting will occur. The use of the heavy equipment will not be constant during the hours of operation but will be limited to when soil is being piled, or loaded. The use of the heavy equipment is not significantly different from residential construction or agricultural use. The noise and vibration generated by the proposed use is not significantly out of character with the area.

Finding #13- The impacts to the immediate neighborhood from traffic generation and noise or vibration will be acceptable because the impacts generated by the operation will not be out of character with the surrounding area.

iii. Dust, glare or heat

The removal of vegetation will expose the soil to wind, creating the potential for dust blowing onto adjacent properties. The applicant will be required to have a water tender available to control dust as needed. Impacts from glare or heat are not anticipated because the exposed soil will not reflect light or generate excessive heat.

Finding #14- The impacts generated by dust, glare, or heat will be acceptable because dust will be controlled by a water tender as needed and impacts from glare and heat are not anticipated.

iv. Smoke, fumes, gas, or odors

The operation of heavy equipment will result in the production of smoke and or fumes. However; the duration and extent of how heavy machinery will be used is limited to when piling and loading soil. The limited duration and extent of

use of heavy machinery will not be out of character with other uses in the surrounding area.

Finding #15- The impact generated by smoke, fumes, gas, or odors will be acceptable because the impacts generated by the operation are limited to when piling and loading soil and will not be out of character with uses in the surrounding area.

v. Inappropriate hours of operation

The applicant's stated hours of operation will be 7:00 am to 6:00 pm Monday through Saturday on a seasonal basis. Because lighting is not proposed, the hours of operation should correspond to daylight hours. This would roughly be April through October. The location of the extraction on the subject property is not adjacent to uses where the hours of operation would be inappropriate.

Finding #16- The hours of operation of the proposed use would be acceptable because they would not be out of character with the hours of operation of adjacent uses or significantly different from uses in the surrounding area.

V. SUMMARY OF FINDINGS

Finding #1- The subject property has adequate usable space for the proposed extractive industry because the property is approximately 35 acres and the proposed extractive industry will occupy 5 acres of the subject property.

Finding #2- The proposed use has adequate access because the Coverdell Road is a paved county road 22 feet wide, is flat and straight with unobstructed site lines, and the applicant will be responsible for materials tracked onto Coverdell Road.

Finding #3- The proposed use should not have significant impacts on the natural environment because the property is largely absent of commonly identified environmental constraints.

Finding #4- The site has adequate space for parking, traffic circulation, and open space because the proposal will only affect 5 acres of the 35 acre subject property.

Finding #5- Fencing, screening, and landscaping is not required because the operation is temporary and the intensity of use is not out of character with the surrounding agricultural uses.

Finding #6- Signage associated with the proposed application is acceptable because the area is zoned SAG-10 which allows signs advertising for a business on site if the sign area does not exceed 40 square feet.

Finding #7- The lack of lighting is appropriate because hours of operation will correspond to daylight hours.

Finding #8- The proposed use does not require connection to water or sewer facilities because the existing home can accommodate employee use and trucks are only on the subject property when being loaded.

Finding #9- The proposed use should not have issues with storm water drainage because the site is relatively flat, and over 1,700 feet from any water bodies.

Finding #10- The impacts to fire and police protection would be acceptable because response times to the subject property will be similar to other uses in the area.

Finding #11- The impacts to streets would be acceptable because Coverdell Road is paved county road in good condition and can accommodate an additional 10 to 20 trips per day.

Finding #12- The impacts from traffic generation would be acceptable because the ADT on Coverdell Road is 370 and the proposed use would generate an additional 10 to 20 trips per day.

Finding #13- The impacts to the immediate neighborhood from traffic generation and noise or vibration will be acceptable because the impacts generated by the operation will not be out of character with the surrounding area.

Finding #14- The impacts generated by dust, glare, or heat will be acceptable because dust will be controlled by a water tender as needed and impacts from glare and heat are not anticipated.

Finding #15- The impact generated by smoke, fumes, gas, or odors will be acceptable because the impacts generated by the operation are limited to when piling and loading soil and will not be out of character with uses in the surrounding area.

Finding #16- The hours of operation of the proposed use would be acceptable because they would not be out of character with the hours of operation of adjacent uses or significantly different from uses in the surrounding area.

VI. RECOMMENDATION

Staff recommends that the Flathead County Board of Adjustment adopt staff report FCU-10-09 as findings of fact approve the Conditional Use Permit.

VII. CONDITIONS

1. Dust abatement shall be performed on the site as needed to limit any impacts to surrounding properties and general air quality.
2. The applicant shall keep Coverdell Road free of materials such as dirt and rocks tracked onto the roadway from trucks exiting from the unimproved access.
3. If DEQ requires a mining permit, the applicant will receive an approved mining permit for the proposed operation, if DEQ does not require a mining permit; the applicant will provide a letter from DEQ for such a determination.
4. The applicant shall contact the DEQ in order to determine if a SWPPP Permit is required. The applicant shall have available a written determination from the DEQ regarding the necessity of a SWPPP permit to the Planning and Zoning Office upon request.
5. Hours of operations shall be limited to 7:00 am to 6:00 pm Monday through Saturday April through October.
6. The operation shall be limited to the removal of top soil.
7. The removal of materials is limited to the 5 acre portion of the property as indicated in this application.

8. Development and operation of the facility shall be performed in compliance with the information presented and approved except as otherwise modified by these conditions.
9. Any change or modification to the use not specified in the application may not be affected unless specifically approved in writing by the Flathead County Board of Adjustment.

Planner: DH